



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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DIRECTOR

July 2, 1993  
AO-93-14

The Honorable Daniel E. Bosley  
1st Berkshire District  
3 Elmwood Avenue  
N. Adams, MA 02147

Re: Maintenance of Boston Apartment

Dear Representative Bosley:

This letter is in response to your letter of February 4, 1993, requesting an advisory opinion as to whether you may charge certain expenses, incurred at your Boston apartment, to your campaign account.

You state that because of the distance from your home in North Adams to Boston (130 miles), it is necessary to maintain an apartment in Boston. While in Boston, you are either involved in constituent services or legislative matters, activities without which you believe you could not have been re-elected. You currently do not charge apartment expenses to your campaign account.

You have been advised that rent or other expenses may be paid out of your campaign account due to recent changes in the statutes. As a result, you would like to explore the legality of charging certain apartment expenses, particularly rent, to your political committee.

For the reasons set forth below, it is the office's opinion that the rent for your apartment is considered personal use and may not be paid for by your political committee. Telephone calls to constituents or other costs directly related to providing legislative or constituent services, however, may be paid for by your political committee under certain provisions.

M.G.L. c.55, s.6 states, in relevant part, that a state legislator's political committee:

may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . . so long as such expenditure is not primarily for the candidate's or any other person's personal use.

It has been the long-standing position of the Office of Campaign and Political Finance ("OCPF") to distinguish between "political purposes" and "legislative or governmental purposes" for campaign finance purposes.

Accordingly, it was OCPF's opinion that a political committee could make expenditures only if the primary purpose of the expenditure was political in nature, i.e., for the enhancement of a candidate's political future. Conversely, in OCPF's opinion, a political committee could not make expenditures if the primary purpose of the expenditure was legislative or governmental in nature since such activity was a "personal use."<sup>1</sup> Over time it became clear, however, that this interpretation created an artificial distinction in certain circumstances since a legislators' provision of constituent and legislative services, although part of their official responsibilities and, therefore, "governmental in nature," also directly affects their political future and, therefore, is also "political in nature." In response to this concern and subsequent legislative discussions and action section 6 was amended. Specifically, section 379 of Chapter 133 of the Acts of 1992 amended section 6 to exclude specifically expenses related to constituent and legislative services from the term "personal use." As amended, M.G.L. c.55, s.6, in pertinent part, provides:

For the purposes of this section the term "personal use" shall not include expenses relating to the provision of constituent or legislative services or to the opening or maintaining of a legislative district office .

. . .

For a number of reasons it is this office's opinion that this amendment does not authorize a political committee to pay rent for your Boston apartment. First, the language of the statute, relevant to your question, speaks to expenses relating to the "provision" of certain services to others rather than the payment of a legislator's basic necessities such as room and board. Maintaining an apartment convenient to where you work does not relate to the provision of constituent or legislative service, except perhaps indirectly or incidentally, in a way that the statute as amended intended but relates more towards your personal lodging and personal convenience in performing your official duties.

Each legislator currently receives \$2,400 per year as well as a per diem based upon the distance between the legislator's home and Boston for expenses including mileage, meals and lodging. See M.G.L. c.3, s.9B. This office recognizes that these allowances may not be adequate to cover any and all expenses that may be incurred by legislators. However, we do not believe that expenses which are in theory paid for by the commonwealth to assist legislator's in performing their official duties or which are otherwise primarily personal in nature and not directly connected with either constituent or legislative service may be paid for by a legislator's political committee as a result of section 379.

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1. In OCPF's opinion the term "personal use" as used in M.G.L. c.55, s.6 prior to recent legislative amendment noted herein was intended to include any non-political uses such as business, governmental, legislative, constituent, family or social. See AO-91-06.

Second, the legislative amendment's specific reference to the opening and maintaining of a district office provides significant guidance regarding the nature of permissible expenditures. Unlike a second residence in Boston, a district office provides clear and direct services to constituents. Consistent with the above, in AO-92-31, the first advisory opinion to interpret the amended statute, the office concluded that a state representative's political committee could pay a portion of the salary of a work-study student who was to provide constituent and legislative work for the representative in the representative's State House office.<sup>2</sup> If the legislature wished to include an unusual expense such as the rental cost of a second Boston residence for legislators it could easily have done so by specific reference as it did for district offices.

Finally, OCPF regulations provide further support that a second residence under the described circumstances is a personal expense and not to be paid for by your political committee. Specifically, 970 CMR 2.06 (6)(b)(2) prohibits political committees from making expenditures for personal expenses but rather only for expenses which will enhance the political future of the candidate. While allowing for interpretation as to what will enhance the political future of a candidate, the regulations speak of expenses which are political in nature and generally in connection with a campaign. Room and board during one's working week is a basic necessity like commuting to work for all individuals and, as such, is fundamentally a personal expense, not one specifically related to campaigning or to the provision of legislative or constituent services. See M-90-02 which provides inter alia that personal automobile expenses include daily commuting costs are not allowable expenses. See also 970 CMR 2.06(d) which permits political committee expenditures for reasonable travel expenses for a candidate in connection with functions or activities where the candidate's participation is important to political relations with his constituents or contributors, provided that the primary interest in participating in the event is for the enhancement of the political future of the candidate. See also 2.05 (j) - (h).

There are, however, other expenses that may be paid for by your political committee which are incurred by you while at your Boston apartment. For example, this office has advised that a political committee could reimburse a candidate for telephone charges related to campaign expenditures. See 970 CMR 2.05 (2)(h)(1) and AO-91-07. Similarly, it is this office's opinion that telephone calls from your Boston apartment in connection with the provision of constituent and legislative services is the type of expense that s.6, as recently amended, was intended to exclude from the definition of personal use and, therefore, may be paid for by your political committee provided, of course, that you and your

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2. The student was not permitted to work on campaign matters while so paid and assigned as to avoid violating the campaign finance law's prohibition against the use of public resources for political purposes. See Anderson v. City of Boston, 376 Mass. 178 (1978).

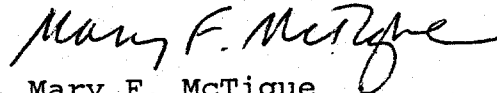
political committee maintain clear and accurate records of such non-personal calls.

In conclusion, your political committee may not pay for the rental expense of your Boston apartment. Although the apartment may perhaps provide some incidental benefit or convenience to you in the performance of legislative or constituent services, the primary purpose of the apartment is personal. However, your political committee may pay for direct legislative or constituent services such as telephone calls made from your Boston apartment to constituents or others in regard to legislative or constituent services subject to appropriate documentation.

This opinion has been rendered solely on the basis of the representations made in your letter as well as subsequent telephone calls with your office and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,

  
Mary F. McTigue  
Director